

water down the 9th Circuit and effectively strip the existing courts of their ability to take up cases. This effect would be consistent with the line of court-stripping legislation that has passed in this House recently—the Pledge Protection Act; the Federal Marriage Amendment; the Marriage Protection Act.

The amendment that was offered by the Distinguished Ranking Member of the Judiciary Committee that would call for increases in the pay that federal circuit judges receive should have been ruled in order.

We must protect the power and discretion of the Courts and we must preserve the sanctity of the U.S. Constitution. The way that we legislate to change the makeup of the federal circuit courts will have a tremendous effect on the development of jurisprudence.

The Subcommittee on Courts, the Internet, and Intellectual Property conducted an oversight hearing regarding federal judgeship needs on June 24, 2003. The Subcommittee reviewed the original request for additional circuit and district judgeships developed by the U.S. Judicial Conference and the methodology adopted to justify the submission.

The Judicial Conference of the United States (Conference) reviews biannually the judgeship needs of all U.S. courts of appeal and U.S. district courts to determine if any of the courts require additional judges to administer civil and criminal justice in the federal court system. The Conference then submits its recommendations to the House and Senate Committees on the Judiciary. The Conference completed its last review in March, 2003, and submitted its recommendations to Congress.

The Conference set a benchmark caseload standard for considering judgeship requests at 430 weighted cases per judgeship for district courts and 500 adjusted case filings per panel for courts of appeal. The Conference process takes into account additional criteria that may influence the judgeship needs of each court, including senior judge and magistrate judge assistance, geographical factors, unusual caseload complexity, and temporary caseload increases or decreases.

Therefore, I support this legislation only insofar as it aids in the administration of justice; however, I reserve my opposition to the negative effects that I can have on the discretion that federal judges have.

Mr. SMITH of Texas. Mr. Chairman, the Chairman did a good job of summarizing S. 878 so I will not repeat his description of the bill.

I would emphasize that during my Subcommittee's oversight hearing on judgeship needs last year we received testimony from the Judicial Conference and others that supported the requests that are a part of this package.

The need to create new circuit and district judgeships is real and speaks to our obligation to assist a coequal branch of government in discharging its duties on behalf of the American people.

I urge Members to support the bill and the Sensenbrenner amendment that will cure a scoring problem with consideration of S. 878.

Mr. THOMAS. Mr. Chairman, I rise today in support of S. 878, which would make important upgrades to the Federal judiciary's infrastructure. I appreciate the leadership Chairman SENSENBRENNER has exhibited in the development of this legislation, which would establish 58 new Federal judgeships.

As reported by the House Committee on the Judiciary, S. 878 would provide 47 new Federal district court judgeships. Significantly, S. 878 reflects legislation (H.R. 3486) that I introduced earlier this year in that S. 878 would convert the expired temporary judgeship in the U.S. District Court for the Eastern District of California temporary judgeship to a permanent judgeship and add three additional permanent judgeships.

These additional four judgeships are much-needed as the seven judges in the Eastern District are currently carrying an average weighted caseload of 788 each, far in excess of the 430 benchmark used by the U.S. Judicial Conference to determine when additional permanent judgeships are required. Moreover, it must be noted that the judges of the Eastern District have exceeded that benchmark since 1998, when their average weighted caseload was 567. The judges of the Eastern District also have an average of 920 pending cases each, an increase of 25 percent since 1998.

In addition, the Eastern District continues to see an annual increase in total filings; in 2003, 5,853 cases were filed in the Eastern District, which is an increase of 1,139 cases from the 4,714 cases filed in 1998. As one would expect, the number of pending cases in the Eastern District has likewise increased; in 2003, there were 6,440 cases pending, which is an increase of 1,269 since 1998.

Accordingly, I encourage my colleagues to continue to work to quickly enact legislation to provide the Federal judiciary, and especially the Eastern District of California, with the resources necessary to efficiently and effectively administer justice.

Mr. BERMAN. Mr. Chairman, we have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

S. 878

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. NEW DISTRICT JUDGESHIPS.**

*The President shall appoint, by and with the advice and consent of the Senate, the following:*

- (1) 1 additional district judge for the northern district of Alabama.
- (2) 1 additional district judge for the middle district of Alabama.
- (3) 3 additional district judges for the district of Arizona.
- (4) 1 additional district judge for the northern district of California.
- (5) 3 additional district judges for the eastern district of California.
- (6) 1 additional district judge for the central district of California.
- (7) 2 additional district judges for the southern district of California.
- (8) 2 additional district judges for the middle district of Florida.
- (9) 4 additional district judges for the southern district of Florida.

(10) 1 additional district judge for the district of Idaho.

(11) 1 additional district judge for the western district of Missouri.

(12) 1 additional district judge for the district of Nebraska.

(13) 2 additional district judges for the district of New Mexico.

(14) 3 additional district judges for the eastern district of New York.

(15) 1 additional district judge for the district of Oregon.

(16) 1 additional district judge for the district of South Carolina.

(17) 2 additional district judges for the eastern district of Virginia.

(18) 1 additional district judge for the district of Utah.

(19) 1 additional district judge for the western district of Washington.

#### **SEC. 2. CONVERSION OF TEMPORARY TO PERMANENT JUDGESHIPS.**

*The existing judgeships for the eastern district of California, the district of Hawaii, the district of Kansas, the eastern district of Missouri, that were authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101-650) shall, as of the date of the enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall, as of such date of enactment, hold those offices under section 133 of title 28, United States Code, as amended by this Act.*

#### **SEC. 3. TEMPORARY JUDGESHIPS.**

(a) **APPOINTMENT.**—The President shall appoint, by and with the advice and consent of the Senate, the following:

- (1) 1 additional district judge for the northern district of California.
- (2) 2 additional district judges for the central district of California.
- (3) 3 additional district judges for the southern district of California.
- (4) 1 additional district judge for the district of Colorado.
- (5) 1 additional district judge for the middle district of Florida.
- (6) 1 additional district judge for the northern district of Illinois.
- (7) 1 additional district judge for the northern district of Indiana.
- (8) 1 additional district judge for the southern district of Indiana.
- (9) 1 additional district judge for the northern district of Iowa.
- (10) 1 additional district judge for the district of New Mexico.
- (11) 1 additional district judge for the eastern district of New York.
- (12) 1 additional district judge for the western district of New York.

(b) **VACANCIES NOT FILLED.**—(1) The first 2 vacancies in the office of district judge in the central district of California, occurring 10 years or more after judges are first confirmed to fill both temporary judgeships created in that district by subsection (a), shall not be filled.

(2) The first 3 vacancies in the office of district judge in the southern district of California, occurring 10 years or more after judges are first confirmed to fill all 3 temporary judgeships created in that district by subsection (a), shall not be filled.

(3) The first vacancy in the office of district judge in each district named in subsection (a), other than the central or southern district of California, occurring 10 years or more after judges are first confirmed to fill the temporary judgeship created in that district by subsection (a), shall not be filled.

#### **SEC. 4. CONFORMING AMENDMENTS.**

The table contained in section 133(a) of title 28, United States Code, is amended—

(1) by amending the item relating to Alabama to read as follows:

“Alabama: